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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/809,336 | 03/26/2004 | Cecilia DeVenezia | DV-04 | 9525 |
| 47728 | 7590 | 12/28/2005 | EXAMINER | |
| THOMAS J. GERMINARIO, ESQ. 154 ROUTE 206 CHESTER, NJ 07930 | | | HAWK, NOAH CHANDLER | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3637 | |
| DATE MAILED: 12/28/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/809,336

Applicant(s)

DEVENEZIA ET AL.

Examiner

Noah C. Hawk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Specification

1. The substitute specification and abstract filed 11/2/05 have been reviewed by the examiner and accepted.

Drawings

2. The replacement drawings were received on 11/2/05. These drawings are acceptable.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

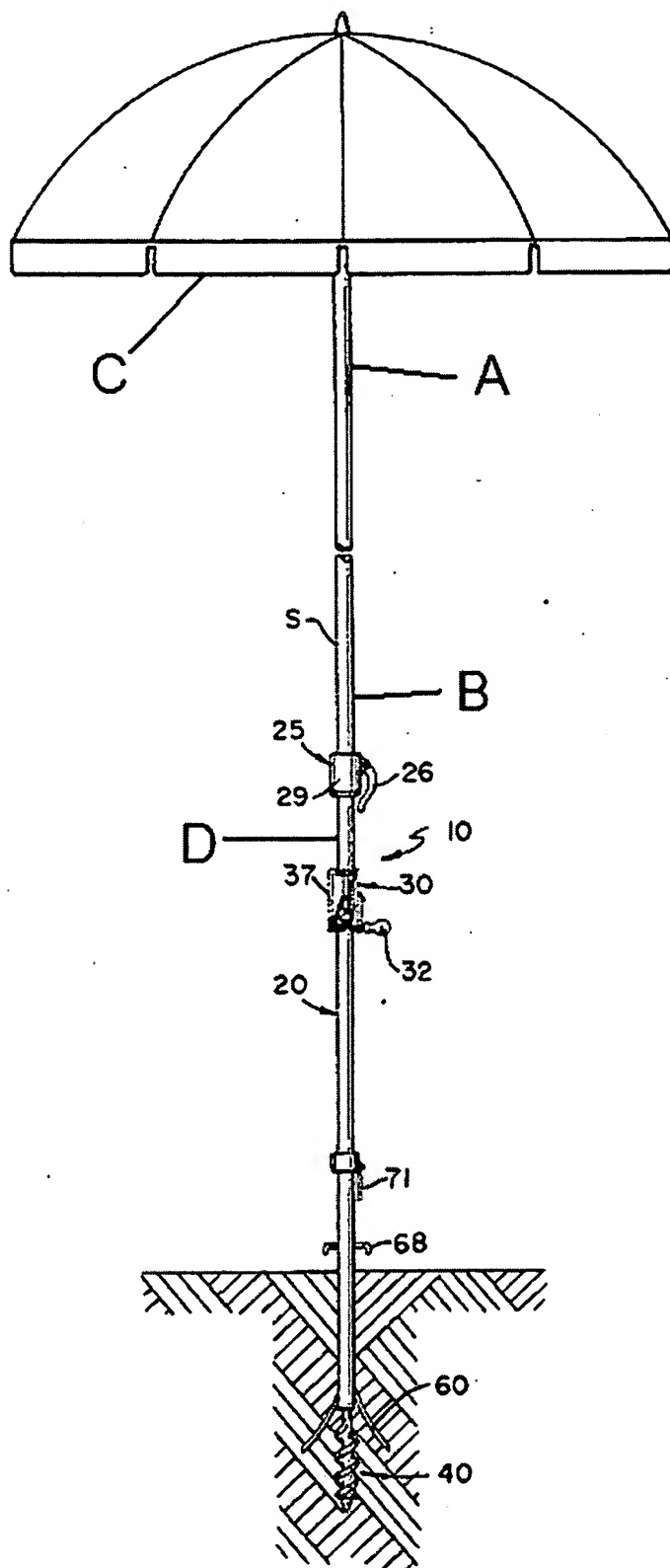
4. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in US Patent 5152495 in view of Doreste in US Patent 6267127 and Adams et al. in US Patent 3961671. Jacinto et al. disclose a self-anchoring beach umbrella comprising a canopy member having an upper tubular element (A), to which a spreadable canopy (C) is attached, and a lower tubular element (B); a pole member (20) having an upper element (D), a motor element (137), comprising an electric motor (80), having on its lower end an axially-disposed shaft (35) through which a rotary torque is generated when the motor is activated and an auger (40) coupled to the shaft

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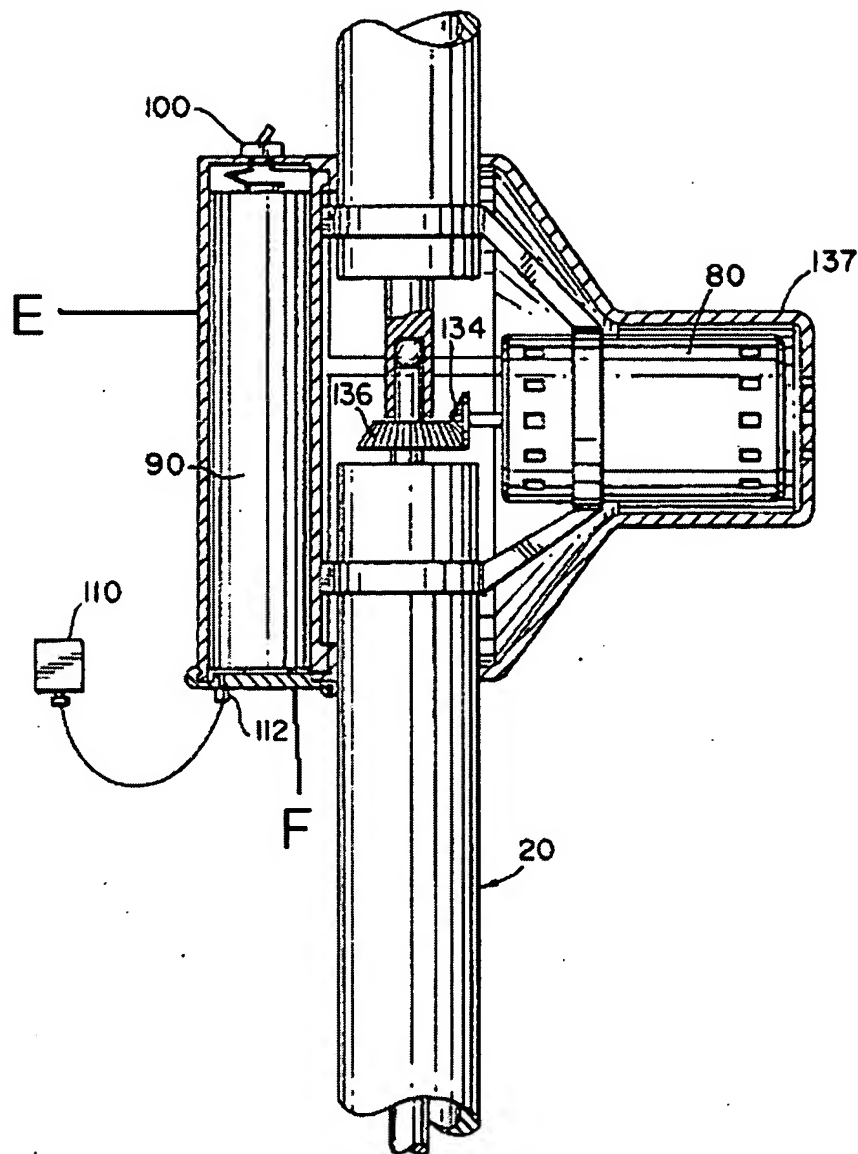
of the electric motor; a battery chamber (E) located in or mounted upon the pole member, said battery chamber having within it one or more batteries (90) and having a means (F) for accessing said batteries so that they may be removed and replaced or recharged; a switch (100) mounted on the motor element of the pole member and electrically connected to the batteries, whereby the motor may be activated and the direction and speed of the motor may be controlled. Jacinto et al. do not teach an axial lumen in the lower tubular element, an upper element for insertion therein, that the motor is reversible or that the device has a handle on the motor with a pressure sensitive switch. Doreste teaches a beach umbrella device with a canopy member (12) having a lower tubular element (20) within which is formed an axial lumen (26) as well as a pole member (50) having an upper element (52) formed for insertion into the axial lumen of the canopy member, but does not teach a reversible electric motor or a handle with a switch. Adams et al. teach an auger device (1) with a reversible electric motor (see Adams et al., Column 3, lines 18-21) such that the auger would rotate in a forward or reverse direction when the motor is activated. Adams et al. further teach an auger device (1) with a handle (comprising 47, 49 and 51) attached to the motor element (5) of the pole member (35), wherein the switch (57) is positioned on the handle so that the switch may be activated while a downward or upward force is applied to the handle and the switch is a positive action switch (see Adams et al., Column 3, lines 53-54 – “spring-loaded” is taken in this case to mean that it springs back to the “off” position when pressure is not constantly applied) such that the switch is not activated unless a continuous pressure is applied thereto. It would have been obvious to one of ordinary

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skill in the art at the time of invention to modify the device of Jacinto et al. by using a reversible electric motor and adding a handle and placing a positive action switch on it as taught by Adams et al. in order to make the machine easier to control and to "rotate in reverse and... back the anchor out" (see Adams et al., Column 5, lines 20-21) and to use an axial lumen in the lower tubular element to receive an upper element formed for insertion therein as taught by Doreste in order to allow the canopy member to be more easily separated from the pole member.



Jacinto et al. Figure 1



Jacinto et al. Figure 3

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste and Adams et al. as applied to claim 3 above, and further in view

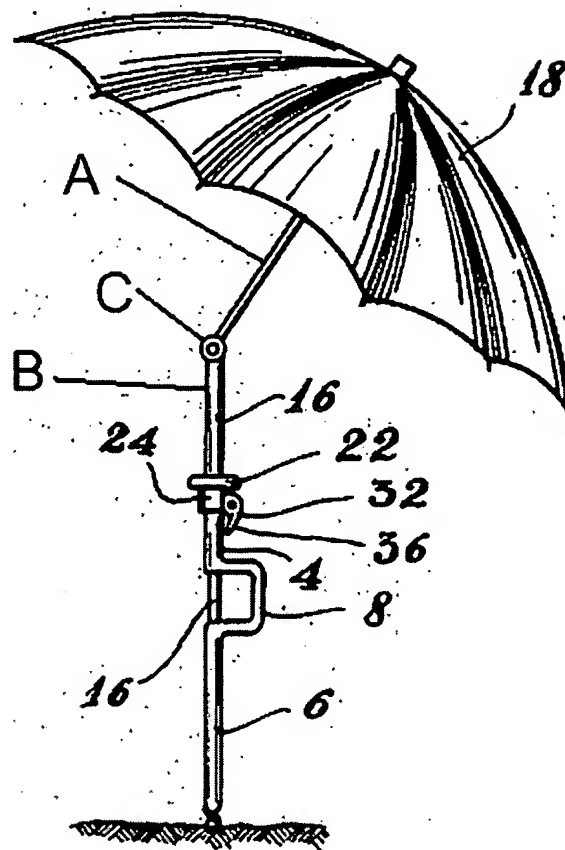
of Mattson in US Patent 4528544. As stated above, Jacinto et al. in view of Doreste and Adams et al. teaches the limitations of claim three including an augur-anchored beach umbrella, but does not teach the specific switch. Mattson discloses a switch that regulates the direction of a motor by the direction of the pressure applied to the switch (see Mattson, Column 1, lines 51-55) and regulates the speed of the motor by the amount of pressure applied to the switch (see Mattson, Column 1, lines 48-51). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste and Adams et al. by using a switch which regulates the direction and speed of the motor as taught by Mattson in order to allow the user to select the correct drilling direction and speed.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste and Adams et al. as applied to claims 2-4 above. As stated above, Jacinto et al. in view of Doreste and Adams et al. teaches all of the limitations of Claim 2-4 including an augur-anchored beach umbrella with a handle and a switch on the handle. Adams et al. further teach an auger (3) which is detachably coupled (see Adams et al., Column 3, lines 57-63) to the shaft (61) of the motor. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste and Adams et al. by using a detachably coupled auger as taught by Adams et al. in order to allow the user to attach different size and shape augers to the device.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste, Adams et al. and Mattson as applied to claim 5 above. As stated

above, Jacinto et al. in view of Doreste teaches all of the limitations of Claim 1 including an augur-anchored beach umbrella. Adams et al. further teach an auger (3) which is detachably coupled (see Adams et al., Column 3, lines 57-63) to the shaft (61) of the motor. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al in view of Doreste, Adams et al. and Mattson by using a detachably coupled auger as taught by Adams et al. in order to allow the user to attach different size and shape augers to the device.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste and Adams et al. as applied to claims 1-4 above, and further in view of Campomar in US Patent 2628797. As stated above, Jacinto et al. in view of Doreste and Adams et al. teaches all of the limitations of Claim 1-4 including an augur-anchored beach umbrella, but does not teach a tilting umbrella. Campomar teaches an auger-anchored umbrella with a joint means (C) disposed between the upper (A) and lower (B) tubular elements for tilting the upper tubular element of the canopy about an axis with respect to the lower tubular element. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste and Adams et al. by using a tilting umbrella as taught by Campomar in order to change the position of the umbrella without changing the anchor position.



Campomar, Figure 3

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacinto et al. in view of Doreste, Adams et al. and Mattson as applied to claim 5 above, and further in view of Campomar in US Patent 2628797. As stated above, Jacinto et al. in view of Doreste, Adams et al. and Mattson teaches all of the limitations of Claim 1 including an augur-anchored beach umbrella, but does not teach a tilting umbrella. Campomar teaches an auger-anchored umbrella with a joint means (C) disposed between the upper (A) and lower (B) tubular elements for tilting the upper tubular element of the canopy about an axis with respect to the lower tubular element. It would have been

obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste, Adams et al. and Mattson by using a tilting umbrella as taught by Campomar in order to change the position of the umbrella without changing the anchor position.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over:

a. Jacinto et al. in view of Doreste and Adams et al. as applied to claim 6 as dependent on claims 1-4 above, and further in view of Campomar. As stated above, Jacinto et al. in view of Doreste and Adams et al. teaches all of the limitations of claim 6 depending from claim 1, including an augur-anchored beach umbrella with a detachable auger, but does not teach a tilting umbrella.

Campomar teaches an auger-anchored umbrella with a joint means (C) disposed between the upper (A) and lower (B) tubular elements for tilting the upper tubular element of the canopy about an axis with respect to the lower tubular element. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste and Adams et al. by using a tilting umbrella as taught by Campomar in order to change the position of the umbrella without changing the anchor position.

b. Jacinto et al. in view of Doreste, Adams et al. and Mattson as applied to claim 6 as dependent on claim 5 above, and further in view of Campomar. As stated above, Jacinto et al. in view of Doreste, Adams et al. and Mattson teaches all of the limitations of claim 6 as dependent on claim 5, including an augur-anchored beach umbrella with a detachable auger, but does not teach a tilting

umbrella. Campomar teaches an auger-anchored umbrella with a joint means (C) disposed between the upper (A) and lower (B) tubular elements for tilting the upper tubular element of the canopy about an axis with respect to the lower tubular element. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Jacinto et al. in view of Doreste, Adams et al. and Mattson by using a tilting umbrella as taught by Campomar in order to change the position of the umbrella without changing the anchor position.

Response to Arguments

11. Applicant's arguments filed 11/2/05 have been fully considered but they are not persuasive.
12. In response to the applicant's argument that Jacinto et al. in view of Doreste as applied to claim 1 in the previous action, the Office has revised the rejection for claim 1 to include limitations taught by Adams et al. stating that the electric motor can be reversible and is used to back the auger out of the ground (see Adams et al., Column 5, lines 20-21).
13. In response to the applicant's argument that the device of Jacinto et al., if reversed, would draw sand into the outer tubular member, please refer to elements 25 and 69 of the device of Jacinto et al. As stated in Jacinto et al., Column 2, lines 64-68

and Column 3, lines 1-11, bearing assembly 25 and seal member 69 are present specifically to prevent the intrusion of sand into the outer tubular member.

14. In response to the applicant's argument that the device of Doreste is non-applicable, the Office points out the fact that Doreste provides the structural limitations of an axial lumen in the lower tubular element to receive an upper element formed for insertion therein (as recited in the instant claim) Further, while not explicitly stated the device of Jacinto et al., with the use of a hammer force provided by Doreste's axial lumen-upper element structure, *could* be driven into the ground, as Doreste discloses that his anchor also has a helical anchor vane and conversely, the anchor device of Doreste, if fitted with a motor, *could* be driven into the ground.

15. In response to the applicant's argument that Adams et al., disclose a method, it is pointed out that as prior art reference is deemed suitable if it shows or describes the elements in questions, not whether they are part of the claimed invention of the reference.

16. In response to the applicant's argument that Adams et al. disclose a device with a "sheer disparity of structure and function" in relation to the claimed invention, the office directs the applicant to the fact that, while the magnitude of the force generated by the Adams et al. device may be larger than that of the claimed invention, the structure used in the above rejections is present in the device as structurally claimed in the application.

17. In response to the applicant's argument that Mattson's switch is not of appropriate scale, the Office points out that the size and capability of the switch are not

under question, as they are not addressed in the claim. Mattson teaches a switch which regulates the direction and speed of the motor, which meets the structural elements of the applicable claims above. Further, the applicant clearly discloses the current use of positive action switches on page 4 of the specification ("a positive action switch type switch... such that the direction of the switch controls the direction of the motor, and the amount of pressure on the switch regulates the speed of the motor. Such positive action switches are typically used on hand-held power tools")

18. In response to the applicant's argument that Adams et al. teach a "totally incongruous" drive tool, the office reiterates the point that, though the size and capability of the device of Adams et al. may not be exactly the same as that of the claimed elements, the structure of the Adams et al. device teaches all of the claimed elements as used in the rejections above.

19. In response to the applicant's argument that Campomar does not teach a jointed, tilting umbrella, the applicant is directed to Campomar, Column 1, lines 16-17 "Such stem is often jointed to allow of positioning the shade at a variable angle." In addition, the Office directs attention to Campomar, Figure 3 as modified by the examiner *and included in this and the previous office action*. The tilting joint is clearly labeled with the reference letter "C."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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12/16/05

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Lanna Mai

Accepted
NCH 12/16/05

Replacement Sheet

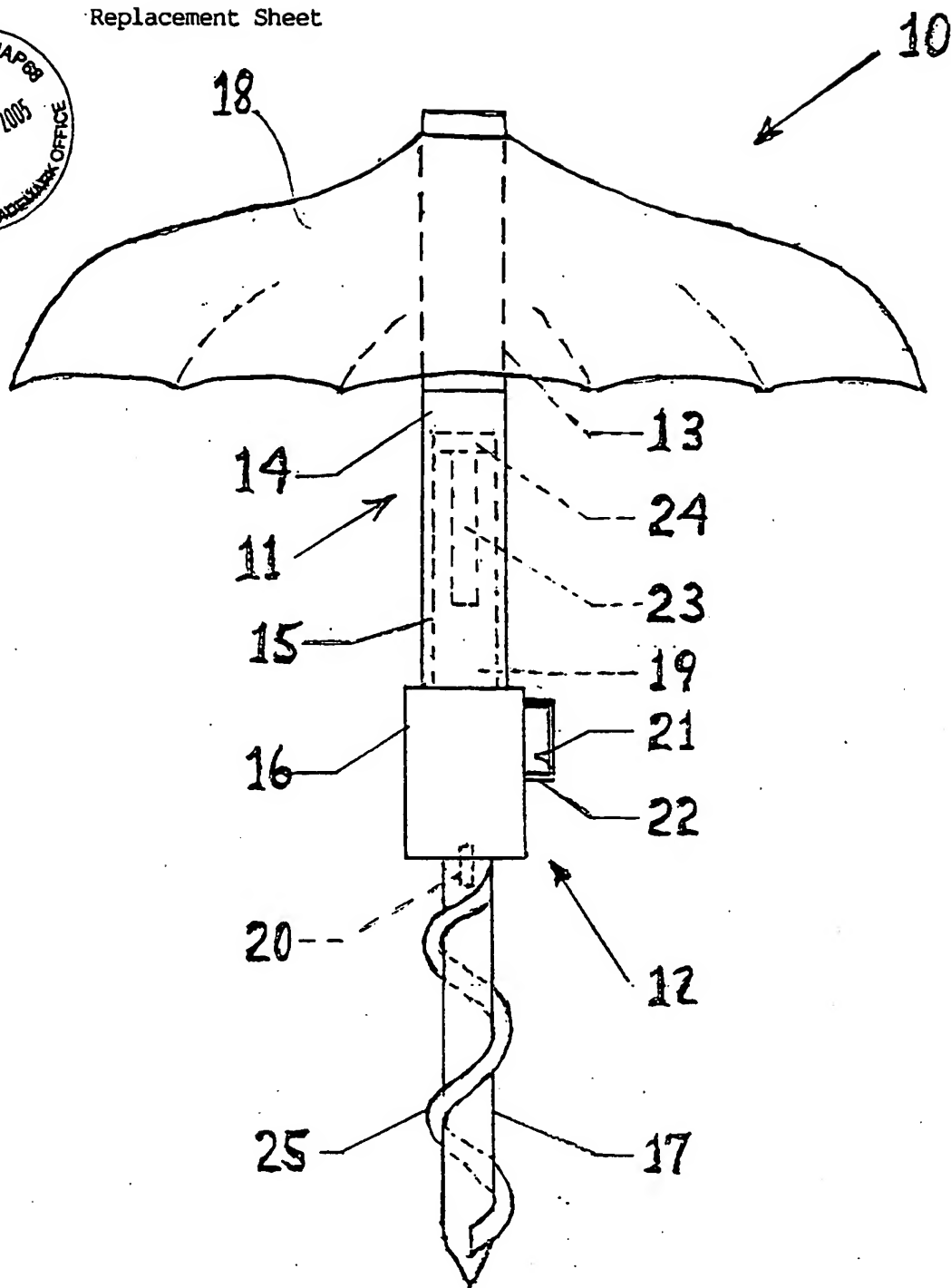


Fig. 1

Auger-anchored beach umbrella